

BEFORE THE DIVISION OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
IN AND FOR THE STATE OF UTAH

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IN THE MATTER OF THE PETITION FILED BY THE DIVISION OF OIL, GAS AND MINING FOR AN ORDER TO REVOKE THE LARGE MINING PERMIT APPROVAL AND FORFEIT RECLAMATION SURETY BOND, GEMSTONE MINING, INC., RED EMERALD MINE, BEAVER COUNTY, UTAH	: : : : : : :	NOTICE OF AGENCY ACTION DOCKET NO. 2001-028 CAUSE NO. M/001/045
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The Division of Oil, Gas and Mining ("Division"), hereby petitions the Board of Oil, Gas and Mining, for an Order forfeiting the reclamation surety bond for the Red Emerald Mine, located in the NW1/4 NW1/4 and the NE1/4 NW1/4 of Section 29, and the NE1/4 of Section 30, Township 29 South, Range 14 West. Beaver County, Utah, and revoking the large mining permit approval. The mine operator is Gemstone Mining, Inc.

JURISDICTION

1. This action is brought by the Division pursuant to Utah Code Annotated § 40-8-7 (1953, as amended).
2. Jurisdiction over this matter is conferred upon the Board of Oil, Gas and Mining ("Board") by Utah Code Annotated § 40-8-6 (1953, as amended).
3. Withdrawal of permit approval is pursuant to Utah Code Annotated § 40-8-16.2(b).
Approval may be withdrawn in the event that the operator fails to provide and maintain surety as may be required under this chapter.
4. Failure to Reclaim is pursuant to the Utah Mined Land Reclamation Rules, R647-4-114.2
If the operator fails or refuses to conduct reclamation, the Board may, after notice and hearing, order that reclamation be conducted by the Division and any surety for this purpose be forfeited. The Board shall request the Attorney General to take the necessary legal action to enforce and collect the amount of liability.

NOTICE REQUIREMENTS

5. Pursuant to Sections 63-46b-6 to 63-46b-11 of Utah Code Annotated (1953, as amended), the hearing will be conducted formally.
6. The hearing will be held on December 5, 2001 at 10:00 a.m. Any party who fails to appear at said hearing may be held in default. Hearing of this matter is set because December 5, 2001, is the only Board Hearing date prior to expiration of the present Letter of Credit from Bank One and the first Board hearing after December 1, 2001, the date by which the Division has directed GMI to either complete reclamation or to post replacement reclamation surety.
7. The names of addresses of all persons to whom Notice of Agency Action shall be given are attached as EXHIBIT "1" and by this reference incorporated herein. All other exhibits will be provided at a later date.

STATEMENT OF THE FACTS

1. On September 10, 2001, the Division received notification from GMI, that they have officially closed the mine and the processing plant as of August 1, 2001. All operations have been suspended. The land owners officially filed for foreclosure against GMI on August 17, 2001. (EXHIBIT A).
2. On September 21, 2001, the Division received notification from Bank One, Utah, N.A. that they will not renew the \$200,200 Letter of Credit #STR15129, posted by GMI as reclamation surety for their Red Emerald Mine, file number M/001/045. The final expiration date of the Letter of Credit will be January 1, 2002. (EXHIBIT B).
3. On September 26, 2001, the Division issued a Division Directive to GMI to replace the \$200,200 cancelled reclamation surety by December 1, 2001, or commence immediate mine site reclamation to be completed by November 30, 2001. (EXHIBIT C).
4. On October 4, 2001, Mr. John Ashton, legal counsel for GMI responded to the Division's Directive stating that they were attempting to reach an agreement with the prior owners with regard to continued mining of the property and substitution of the bond. They hoped that the issue of the current reclamation bond will be resolved prior to any hearing the Division of Oil, Gas and Mining would set concerning a possible bond forfeiture. (EXHIBIT D).

COUNT 1

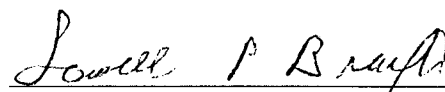
5. The Division incorporates by reference paragraphs 1 through 4 as stated above.

PRAYER FOR RELIEF

WHEREFORE, the Division requests that the Board enter the following Order:

- A. Revoke GMI's large mining permit approval for the Red Emerald Mine, file number M/001/045.
- B. An authorization from the Board for the Attorney General or a duly authorized officer of the Division of Oil, Gas and Mining to forfeit the Letter of Credit #STR15129 before the expiration date of January 1, 2002.

REQUESTED this 19th day of October, 2001.



Lowell Braxton, Director
Division of Oil, Gas and Mining
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, Utah 84114-5801
Telephone: (801) 538-5340

CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the foregoing NOTICE OF AGENCY ACTION for Docket No. , Cause No. M/001/045, to be mailed by first class mail, postage prepaid, the 19th day of October, 2001 to:

CERTIFIED RETURN RECEIPT

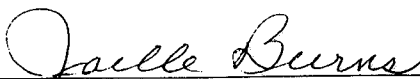
7099 3400 0016 8896 4479

John Ashton, Esq.
Prince, Yeates, Geldzahler
City Center One, Suite 900
175 East 400 South
Salt Lake City, Utah 84111

Ed Ginouves
Bureau of Land Management
Cedar City Field Office
176 East DL Sargent Drive
Cedar City, Utah 84020

Tom Mitchell
Assistant Attorney General
160 East 300 South - 5th Floor
P.O. Box 140857
Salt Lake City, Utah 84114-0857

John Maycock
Assistant Attorney General
1594 West North Temple – Suite 300
Salt Lake City, Utah 84116



Joelle Burns
Minerals Engineering Technician



GEMSTONE MINING, INC.

PO Box 3413, Cedar City, UT 84720, USA
Telephone: 435-867-0318
Fax: 435-867-0321

State of Utah
Department of Oil Gas and Mining
Attn: Tom Munson
Fax: 801-359-3940

E/001/107
M/001/045

Dear Tom-

This letter is to inform you that Gemstone Mining Inc has officially closed the mine and plant as of August 1, 2001. As of this time all operations have been suspended.

Also Gemstone Mining Inc did not make the option payment due to the Rex Harris and Red Emerald parties on June 12, 2001. These parties officially filed for foreclosure on August 17, 2001. We are currently in the 90 day period of this foreclosure.

Sincerely,

Scott H Wilkinson
Gemstone Mining Inc.

EXHIBIT

A

RECEIVED

SEP 10 2001

DIVISION OF
OIL, GAS AND MINING

BANK ONE, UTAH, N.A.

1717 MAIN STREET, 11TH FLOOR, DALLAS, TEXAS 75201

TELEPHONE: 1-800-924-5435

SEPTEMBER 20, 2001

APPLICANT:
GEMSTONE MINING, INC.
P.O. BOX 3413
CEDAR CITY, UTAH 84721


BENEFICIARY:
UTAH DIVISION OF OIL, GAS, AND MINING
1594 W. NORTH TEMPLE, STE. 1210
SALT LAKE CITY, UTAH 84114-5801

RE: *LETTER OF CREDIT NO. STR15129*
LETTER OF CREDIT AMOUNT \$200,200.00

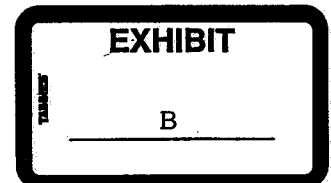
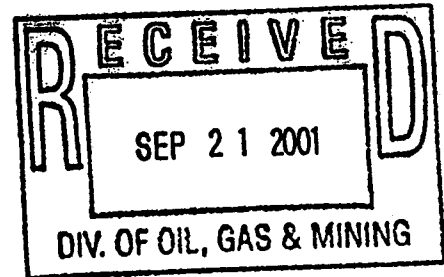
GENTLEMEN:

AS PER THE TERMS AND CONDITIONS OF THE ABOVE-MENTIONED LETTER OF CREDIT, WE HEREBY GIVE NOTIFICATION OF OUR INTENT NOT TO EXTEND OR RENEW THE ABOVE-MENTIONED LETTER OF CREDIT.

THE FINAL EXPIRATION DATE OF LETTER OF CREDIT NO. *STR15129* WILL BE *JANUARY 1, 2002.*



AUTHORIZED SIGNATURE
BANK ONE, UTAH, N.A.
SS:





State of Utah
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF OIL, GAS AND MINING

Michael O. Leavitt
Governor
Kathleen Clarke
Executive Director
Lowell P. Braxton
Division Director

1594 West North Temple, Suite 1210
PO Box 145801
Salt Lake City, Utah 84114-5801
801-538-5340
801-359-3940 (Fax)
801-538-7223 (TDD)

September 26, 2001

CERTIFIED RETURN RECEIPT
7000 0520 0021 7582 9507

Mr. John Ashton, Esq.
Gemstone Mining Company
c/o Prince, Yeates, Geldzahler
City Center One, Suite 900
175 East 400 South
Salt Lake City, Utah 84111

Re: Division Directive to Replace Cancelled Reclamation Surety, or Commence Immediate Mine Site Reclamation, Gemstone Mining Inc., Red Emerald Mine, M/001/045, Beaver County, Utah

Dear Mr. Ashton:

On September 21, 2001 the Division received notification from Bank One, Utah, N.A. that they will not renew the Letter of Credit posted as reclamation surety for Gemstone Mining Incorporated's Red Emerald Mine, located in Beaver County, Utah. The Letter of Credit No. STR15129 will be canceled on January 1, 2002 (see attachment).

On September 10, 2001, we received written notification from Gemstone Mining Incorporated (GMI) that as of August 1, 2001, GMI officially closed the mine and processing plant (millsite). We were also informed that on August 17, 2001, the mineral owners officially filed for foreclosure, because of GMI's failure to fulfill its contractual obligations. Based on this information, and a recent telephone conversation with Scott Wilkinson of GMI, informing us that all employees have been laid off, *the Division hereby directs GMI to perform the following action(s):*

1. Post a replacement form of reclamation surety in the amount of \$200,200 within 60 days of your receipt of this notice, or

EXHIBIT

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Page 2
John Ashton
M/001/045
September 26, 2001

2. Commence immediate reclamation of all mining-related disturbances associated with the Red Emerald Mine in accordance with the approved reclamation plan. The reclamation work should be completed by November 30, 2001.

The Division further directs GMI to provide a written response to this office, indicating which option they choose to implement, no later than *October 9, 2001*.

Gemstone Mining Inc.'s failure to provide an adequate response to this directive by October 9, 2001, will force the Division to seek an order from the Board of Oil, Gas and Mining (Board) to initiate bond forfeiture proceedings. A formal hearing will need to be scheduled before the Board, as required by Statute and Rule, before the bond may be forfeited.

Please contact me at (801) 538-5286, or Tom Munson at 538-5321 if you have questions in this regard. Thank you for your consideration and prompt attention to this important permitting concern.

Sincerely,

A handwritten signature in dark ink, appearing to read "D. Wayne Hedberg". Below the signature, the word "FOR" is written in a smaller, handwritten font.

D. Wayne Hedberg
Permit Supervisor
Minerals Regulatory Program

jb
Attachment: surety cancellation notice
cc: Ed Ginouves, BLM- Cedar City FO
Kurt Seel, AAG's Office
Mary Ann Wright, DOGM
Gemstone-bond-cancel.doc
cc: Dana Jensen, atty
Parrwidda ps
185 S. State #1300
SLC 84147

M/001/045

PRINCE, YEATES & GELDZAHLER

A PROFESSIONAL CORPORATION

LAWYERS

CITY CENTRE I, SUITE 900
175 EAST 400 SOUTH
SALT LAKE CITY, UTAH 84111
TELEPHONE (801) 524-1000
FAX (801) 524-1098

ROBERT M. YEATES
JON C. HEATON
JOHN P. ASHTON
RICHARD L. BLANCK
D. JAY GAMBLE
J. RANDALL CALL
JOHN S. CHINDLUND
JAMES A. BOEVERS
DAVID K. BROADBENT
THOMAS J. ERBIN
M. DAVID ECKERSLEY
ROBERT G. WING

CARL W. BARTON
SALLY BUCK MCMINIMEE
ROGER J. MCCONKIE
ALLEN SIMS
RICHARD H. THORNTON
MICHAEL N. ZUNDEL
THOMAS R. BARTON
CATHLEEN C. GILBERT
GLENN R. BRONSON
MATTHEW T. WIRTHLIN
JAMES W. MCCONKIE, III

OF COUNSEL
LYLE M. WARD
MARK O. VAN WAGONER

OF COUNSEL
MOYLE & DRAPER, P.C.
HARDIN A. WHITNEY
JOSEPH J. PALMER
O. WOOD MOYLE III
WAYNE G. PETTY
ROYAL I. HANSEN

F. S. PRINCE (1910-1991)
DAVID S. GELDZAHLER (1932-1994)

October 4, 2001

Direct Dial 524-1005

D. Wayne Hedberg
Permit Supervisor
Minerals Regulatory Program
STATE OF UTAH
1594 West North Temple, Suite 1210
P.O. Box 145801
Salt Lake City, UT 84114-5801

Re: *Division Directive to Replace Canceled Reclamation Surety, or
Commerce Immediate Mine Site Reclamation, Gemstone Mining Inc.,
Red Emerald Mine, M/001/045, Beaver County, Utah*

Dear Mr. Hedberg:

I am in receipt of your letter of September 26, 2001. I believe Mr. Munson of your office has spoken with Dominique Merz who is the current non-legal representative of Gemstone Mining.

In response to your inquiries, let me indicate to you that I have been in contact with counsel for the parties seeking to foreclose an alleged interest in the mine. We are attempting to address the possibility of reaching some sort of an agreement with the prior owners with regard to the continued mining of the property and the substitution of a bond to replace the bond which you currently hold concerning Gemstone Mining's use of the property. We recognize that a resolution of these issues may not be possible before the October 9, 2001 deadline set forth in your letter. However, it is hoped that the issue of the current reclamation bond will be resolved prior to any hearing which your office would set concerning a possible bond forfeiture. Please keep me informed as to the date of any such hearing. Likewise, I will keep in contact with you regarding the status of the reclamation bonds on the property. Since the letter of credit on those bonds is not to be

EXHIBIT

D

October 4, 2001

Page 2

canceled until January 1, 2002, it would seem that we have sufficient time to resolve these issues to the satisfaction of everyone involved.

Very truly yours,

PRINCE, YEATES & GELDZAHLER

A handwritten signature in black ink, appearing to read "John P. Ashton". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

John P. Ashton

JPA/gm

cc: Tom Munson

1594 W. North Temple, #1210

P.O. Box 145801

Salt Lake City, UT 84114-5801